BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901-7, Ohio Administrative Code, Standard Filing Requirements for Rate Increases Filed Pursuant to Chapter 4909, Revised Code.	)))))	Case No. 08-558-AU-ORD

REPLY COMMENTS OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY

I. INTRODUCTION

Pursuant to the Commission's May 7, 2008 Entry and the Attorney Examiner's subsequent Entry of June 12, 2008, the FirstEnergy Ohio operating companies of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively referred to herein as "the FE Companies") submit the following reply comments on the proposed changes to the Standard Filing Requirements set forth in Chapter 4901-7 of the Ohio Administrative Code. And generally, except for certain comments submitted by the Office of the Ohio Consumers' Counsel ("OCC"), which are more fully discussed below, the FE Companies do not oppose the suggestions of other parties that are not inconsistent with those made by the FE Companies in their initial comments submitted on July 15, 2008.

II. COMMENTS OF THE FE COMPANIES

Section 119.032(C) of the Ohio Revised Code requires this Commission to determine, among other things, whether the rules under review need to be amended in order to reduce unnecessary paperwork, or eliminated as being redundant or in conflict with other rules. Further, as the Commission's May 5, 2008 Entry in this docket notes, on February 12, 2008, Governor Strickland issued Executive Order 2008-04S, entitled "Implementing Common Sense Business Regulation." This order requires the Commission to ensure that "each of its rules is needed in order to implement the underlying statute" and to "amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient or needlessly burdensome, or that unnecessarily impede economic growth, or that have had the unintended negative consequences; and must

reduce or eliminate areas of regulation where federal regulation now adequately regulates the subject matter." (May 5, 2008 Entry at 2.) In its comments, the OCC seeks to expand the standard filing requirements to include new provisions dealing with (i) charts of accounts; (ii) filings related to management policies, practices and organization; (iii) waiver requests; (iv) distributed generation; (v) smart metering; (vi) energy efficiency; and (vii) regulatory fines, penalties and settlements. As explained below, the FE Companies believe that OCC's proposed changes fly in the face of the principles underlying this review and, accordingly, urge the Commission to reject them.

A. Charts of Account

In instances where the applicant utility's financial data differs from the Uniform Standard of Accounts ("USOA"), OCC recommends that the rules require an applicant utility to provide significantly more information, including (i) how the use of its accounts impacted test year data and related schedules, (ii) how the method used by the utility translated its data from non-USOA data to USOA data; (iii) how the non-USOA and USOA data is reconciled; and (iv) identification of the accounting software used and copies of the manuals underlying the utility's accounting system. (OCC Comments, pp. 5-6.)

As a preliminary matter, the preparation of a rate case is extremely resource intensive and a rate case filing for a large utility is extremely voluminous, involving numerous accounts, many of which are relatively easy to review. To require a utility to provide this additional data, including reconciliations of *each* account, is a waste of time and resources, especially when the information being requested by OCC may be available through discovery, and is definitely available to the Staff during its audit and through data requests. Moreover, accounting software and underlying supporting documentation are subject to licensing agreements and are generally quite voluminous, thus making it very difficult (and costly) for a utility to simply turn copies over to other parties. And finally, a rule is already in place to address OCC's concerns. If the utility deviates from the USOA Chart of Accounts, the utility must request a waiver. Given that the Staff is charged with auditing the application as filed, the Commission is in the best position to determine whether additional information is actually necessary and, if so, it is within the Commission's authority to reject or modify the request for waiver. OCC's suggestion in this area is redundant with current rules and procedures and needlessly burdensome. Accordingly, it should be rejected.

B. Management Practices

As OCC correctly points out in its comments at page 6, Section II(A)(9)(e) currently requires an applicant utility "to satisfy all standard filing requirements relating to management policies, practices and organization in its first rate case filing after their adoption [and,] [a]fter the first filing, the utility must include ... only changes, enhancements and modifications to management processes." The Staff has proposed that a new filing be made if the complete filing was more than ten years old at the time the current application is submitted. OCC believes that this suggested change by the Staff does not go far enough and recommends that the rule be changed to require the applicant "to file a complete set of management polices, practices and organization if [it has] been purchased by another company, if [it has] purchased another regulated entity, if [it has] experienced a substantial change in operations ... or if a merger has taken place within the ten year time frame." (OCC Comments, p. 7.)

Again, OCC apparently fails to realize the time and resources required to compile a "complete set" of management polices, practices and procedures, and fails to recognize the safeguards already in place to accomplish its goal of obtaining "a better picture of applicant's management structure and function at the time the application is filed." (Id.) First, the rule as proposed by the Staff requires the applicant utility to submit a summary of changes that occur since the last complete filing. Therefore, if there is a significant change, whether it's through the purchase of or by a utility, a merger, or simply a change in operating procedures, the change(s) will be included in such a summary. Moreover, a sale, purchase or merger may not trigger any significant changes in management's policies, practices or procedures and, therefore, a blanket mandate to submit a complete package may not be necessary. And finally, if a utility purchases another regulated entity, it would be *the purchased regulated entity* that would be the applicant under these rules and the purchased entity would either have its own management plan subject to update already filed with the Commission or would be required to submit a complete management report. Under the first scenario, the summary of changes may suffice, while under the second, the rule as proposed by the Staff addresses the issue.

In sum, OCC's recommendation to mandate complete management reports automatically upon a sale, purchase or merger affecting the applicant utility is unnecessary and unduly burdensome. The controls currently in place in the rules as proposed are sufficient to address OCC's concerns. The rules require the Company to disclose significant changes from previous

reports. If there are numerous changes, it may behoove the applicant utility to submit a complete report. But that decision should be left to the applicant based on the specific circumstances at the time. And if the utility does not provide sufficient detail, both the Staff, through its audits and data requests, and other parties, through the discovery process, have the opportunity to obtain more information. For these reasons, this recommendation by the OCC should be rejected.

C. Waiver Requests

The current rule related to waivers of information requirements currently requires an applicant utility to submit all information required in the Standard Filing Requirements, unless (i) the applicant seeks a waiver; or (ii) the Commission, upon its own motion, eliminates the requirement. OCC has two recommendations related to this rule, the first of which – to eliminate the Commission's right to waive a requirement on its own motion – the FE Companies do not oppose. OCC's second recommendation, however, proposes that future waivers be filed separately from the application "in order to give the Commission and interested parties clear notice regarding the existence and nature of the waiver request." (OCC Comments, p. 10.) The FE Companies are at a loss to understand the need for this suggested change. Waiver requests are a standard practice in rate case filings. They have been done the same way for years and OCC fails to provide a single instance in which a party did not have sufficient notice or did not understand the rationale underlying the request. The Governor's Executive Order 2008-04S, a directive on which this rule review is based, is entitled "Common Sense Business Regulation." In this instance, OCC's recommendation makes no sense and serves no practical purpose not already addressed under current procedures. Accordingly, it should be rejected.

D. Distributed Generation

OCC suggests additional rules that "require the utility to include in its filing the size and location of any distributed generation interconnected to its system, as well [as] the size and location of all requested or proposed interconnections." (OCC Comments, p. 11.) OCC also would require the application to "state the benefits to the distribution system of such Distributed Generation and quantify the benefits, if possible." (Id.) OCC provides no explanation as to how these requirements fit within the scope of a distribution rate case. Indeed, distributed generation is the subject of separate dockets, *see e.g.,* PUCO Docket Nos. 05-1500-EL-COI; 07-647-EL-UNC, and the quantification of the benefits provided by distributed generation has been addressed

by the Ohio Supreme Court when deciding the price a utility must pay for such generation fed onto its system. *FirstEnergy Corp. v. Pub. Util. Comm.*, 95 Ohio St. 3d 401 (2002). Moreover, the purpose of a rate case is to recover through rates costs in rate base, a return on those costs, and reasonable operating expenses. If there are *monetary* costs or benefits associated with distributed generation, these costs and benefits will already be included in the applicable accounts that are already included in the filing and subject to review through Staff audits, data requests and discovery. This rulemaking is not the place to advance OCC's agenda at the cost of utilities by requiring significant amounts of information and analysis that is beyond the scope of a rate case proceeding. Accordingly, this recommendation by OCC should also be rejected.

E. Smart Metering

OCC also believes that the standard filing requirements should be expanded to require inclusion of costs and benefits associated with smart metering. For the reasons discussed in Section II (D) above, this recommendation should also be rejected. It is already the subject of a separate proceeding, *see e.g.* PUCO Docket Nos. 05-1500-EL-COI; 07-646-EL-UNC, and any monetary costs subject to rate recovery would already be included in the application.

F. Energy Efficiency

Again, OCC attempts through this rulemaking to advance its agenda on energy efficiency, demand response and renewable energy by recommending a rule that requires an applicant utility to file information that "shows [its] past efforts on, current progress towards, and future plans for meeting the required benchmarks in all of these areas." (OCC Comments, p. 13.) The issues raised by OCC are addressed by statutes unrelated to the ratemaking statutes set forth in Title 49 of the Ohio Revised Code and accordingly the subject matter is beyond the scope of these rules. A distribution rate case proceeding is not the forum in which to review compliance with such requirements. That is better left to the process set forth in Sections 4928.64 and 4928.66 of the Ohio Revised Code -- the statutes that established the requirements. This recommendation by OCC should be rejected.

G. Regulatory Fines, Penalties and Settlements

Finally, OCC would have a new filing requirement that identifies "fines or penalties a utility has incurred or settlements a utility has reached with any governmental agency" including

"specific information about the amount paid as part of the fine, penalty or settlement and an explanation addressing the circumstances." (OCC Comments, p. 13.) As OCC correctly points out, "[a]lmost every facet of the daily operations of Ohio's utilities falls under State or Federal regulation." As such, it is the place of these individual regulatory agencies to determine the circumstances under which a utility is fined or penalized and whether such information should be made public. Similarly, it is the role of the specific agency involved in the incident to determine the terms and conditions under which a settlement is reached, including the confidentiality or lack thereof of the details. To *mandate* disclosure of the underlying circumstances of a settlement would overstep the bounds of this Commission, usurping the authority of other regulatory agencies, and could create a chilling effect that makes settlements much more difficult. Moreover, if there are any costs associated with fines, penalties or settlements for which the applicant utility seeks recovery, such costs will already be included in the application and would thus be subject to Staff audits and possibly discovery. For these reasons, OCC's recommendation of an additional rule requiring such disclosure should also be rejected.

III. Summary

In sum, except for the comments of the OCC that are addressed above, the FE Companies do not oppose those suggestions by commenting parties that are not inconsistent with the FE Companies' initial comments filed in this docket on July 15, 2008. As explained above, the OCC's recommendations for changes and additions to the standard filing requirements ignore the fact that there is an entire procedure in place, including Staff audits and the discovery process, that address many of OCC's concerns, thus making OCC's recommendations redundant, unnecessary, needlessly burdensome and, as a result, unnecessarily costly. And for those that are not addressed either by the procedures already in place or the rules as proposed, there is good

reason. The subject matter is not appropriate for a rate case proceeding. For these reasons, the aforementioned recommendations by the OCC should be rejected.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Reply Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company filed in this proceeding was served by First Class United States Mail, postage prepaid on this 30th day of September, 2008.

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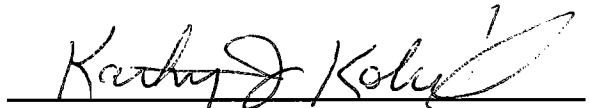

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Summary: Comments Reply Comments of the FirstEnergy Ohio Operating Companies electronically filed by Ms. Kathy J Kolich on behalf of Ohio Edison Company and The Cleveland Electric Illuminating Company and The Toledo Edison Company